

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ST. REGIS PAPER COMPANY,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 978

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

A formal hearing on the appeal of St. Regis Paper Company to a notice of civil penalty of \$250.00 for an alleged particulate emission violation came on before Board members W. A. Gissberg (presiding), Art Brown (Chairman) and Chris Smith on January 6, 1977 in Lacey, Washington. Thereafter a proposed Order was issued, followed by exceptions and a reply thereto. Dave Mooney has since succeeded Art Brown as a member of this Board.

Appellant appeared by and through its attorney, Ronald Roberts;

1 respondent by its attorney, Keith D. McGoffin.

2 Having either heard the evidence or read the transcript and
3 considered the exhibits and argument of counsel and having carefully
4 considered and denied the exceptions of appellant, the Board makes and
5 enters the following

6 FINDINGS OF FACT

7 I.

8 Respondent, pursuant to RCW 43.21B.260, has filed with this
9 Board a certified copy of its Regulation I containing respondent's
10 regulations and amendments thereto.

11 II.

12 Article nine of the respondent's Regulation I adopts both a
13 visual and weight rate standard in regulating air contaminants and
14 particulate matter. This appeal concerns Section 9.09(b)(3) which
15 provides:

16 It shall be unlawful for any person to cause or
17 allow the emission of particulate matter . . .
18 if the particulate matter discharged into the
19 atmosphere from any single source exceeds the
20 following weights at the point of discharge:

21 . . .

22 (3) In fuel burning equipment utilizing wood
23 residue, 0.20 grains for each standard cubic
24 foot of exhaust gas, adjusted or calculated to
25 12 percent carbon dioxide.

26 III.

27 On the weekday of November 25, 1975, at the request and expense of
28 respondent, a source test was conducted on the stack from the No. 13
29 hog fuel boiler located at appellant's Tacoma plant. The purpose of the

30 FINAL FINDINGS OF FACT,
31 CONCLUSIONS OF LAW AND ORDER

1 test was to measure emissions of particulate matter to ascertain the
2 concentrations and quantity thereof to determine whether the emissions
3 violated the standard of respondent's regulation. For testing purposes,
4 respondent's personnel directed that the boiler be operated with typical
5 fuel at its maximum steam rate, 50,000 pounds per hour. The normal
6 operating steam rate of the boiler is 25,000 to 30,000 pounds per hour,
7 depending upon the moisture content of the fuel used. The boiler is
8 operated by appellant seven days a week on fuel that consists of sawmill
9 planer shavings and sawdust. There is no control over the moisture
10 content of the fuel except that appellant saves the driest fuel for
11 burning on weekends.

12 IV.

3 At about 7:00 AM on the day of the test, appellant's employees
14 began to increase the steam rate of the boiler from 20,000 pounds
15 in order to build it up to the maximum rate directed by respondent.
16 The operation of the boiler under respondent's test procedures
17 continued until about 3:00 PM.

18 Appellant was required by the statutes and respondent's
19 regulations to allow the tests to be performed as directed by
20 respondent.

21 V.

22 As a result of the tests, respondent determined that on
23 November 25, 1975, the day the tests were conducted, particulate
24 was emitted from the No. 13 boiler stack whose weight was in excess of
25 0.20 grains for each standard cubic foot of exhaust gas when adjusted
-6 to 12 percent carbon dioxide. Thereafter, respondent issued a notice

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 of violation for emissions occurring on the test day, followed by the
2 imposition of the \$250.00 civil penalty which precipitated this appeal.

3 VI.

4 Appellant admits that while its personnel were increasing
5 the boiler steam rate in preparation for the test and during the
6 testing process itself, particulate emissions occurred which were
7 in excess of the standard allowed by respondent's regulation.
8 Nonetheless, appellant contends that it did not violate the standard
9 nor the regulation during the time of the stack emissions test for
10 the reason that it was respondent which directed and conducted
11 the same and therefore appellant did not "cause or allow" the
12 forbidden emission.

13 VII.

14 The two tests conducted on November 25 did not represent a
15 "normal" firing rate. The "normal" firing rate is 25,000 pounds.
16 Nonetheless, the boiler can operate "normally" at 30,000 pounds
17 depending upon the moisture content of the fuel. Although the
18 steam charts do not indicate the types of fuel (wet or dry) being
19 used at high and low steaming rates, the practice of appellant is to
20 set aside the dry fuel for use during the weekends. While the
21 use of dry fuel produces a hotter fire and a higher steam rate,
22 it also results in more efficient combustion and less particulate
23 emissions than wet fuel. Whether there is with absolute certainty a
24 particulate emission violation at any given steam rate, depends upon
25 the moisture content of the fuel and the ability of the operator to
26 manually maintain the optimum fuel-air ratio.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 VIII.

2 Of the time the mill is operating it does so at a steam rate
3 in excess of 25,000 pounds per hour 15 percent of the time, and
4 below 25,000 pounds 85 percent of the time.

5 IX.

6 Testing of the stack emission also occurred in September and
7 October 1976. The condition of the equipment being tested was
8 the same, except for minor repairs, as it had been during the
9 tests of November 25, 1975. The 1976 test results are shown on
10 Exhibit R-6. Our reading of Figure 1 of Exhibit R-6 demonstrates
11 that when the boiler is operating in excess of 20,000 pounds of steam
12 per hour, the emissions therefrom exceed the standard of the regulation.
13 (Mr. Snowden used the figure 20,000 pounds in his oral testimony).

14 X.

15 Between 3:20 and 3:35 AM on November 25, 1975, boiler No. 13
16 was operated at a steam rate in excess of 30,000 pounds per hour.
17 (Exhibit R-2)

18 XI.

19 Any Conclusion of Law hereinafter stated which may be deemed
20 a Finding of Fact is hereby adopted as such.

21 From these Findings, the Pollution Control Hearings Board
22 comes to these

23 CONCLUSIONS OF LAW

24 I.

25 A civil penalty can be lawfully imposed upon appellant only if it
26 "caused or allowed" a violation of respondent's regulation to occur.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 We conclude that the owner of a facility can be said to have "caused
2 or allowed" a violation which occurs during the time of testing
3 conducted under the direction of appellant's inspectors where: (a) the
4 facility would have been operating in its normal practice and procedures
5 at the time regardless of the test, and (b) the testing shows that an
6 emission in excess of the standard allowed by the regulation occurs when
7 the facility is operating in its normal practice and typical procedures.

8 II.

9 When respondent presents evidence which establishes the
10 probability that an emission occurred which is in excess of its
11 weight rate standard, it has proven a prima facie violation of
12 the regulation.

13 The appellant, a substantial business enterprise, has exclusive
14 control of the relevant facts which could constitute a defense. In this
15 instance, such facts could be the moisture content of its fuel and the
16 normal fuel-air ratio. Reason, logic, and the purposes of the Clean
17 Air Act and respondent's regulations require that appellant be
18 required to go forward with such evidence. If the evidence
19 establishes, and it does, that a violation probably occurred
20 at a given steam rate, then the burden of going forward with the
21 evidence shifts to appellant to present evidence that the fuel
22 was such that it is probable that there would not have been a
23 violation at that steam rate. Having failed to present such
24 evidence, appellant must fail.

25 III.

26 Appellant violated Section 9.09(b)(3) of respondent's

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Regulation I. The civil penalty should be upheld.

2 IV.

3 Any Finding of Fact which should be deemed a Conclusion of Law
4 is hereby adopted as such.

5 Therefore, the Pollution Control Hearings Board issues this

6 ORDER

7 The civil penalty of \$250.00 is affirmed.

8 DATED this 26th day of April, 1977.

9 POLLUTION CONTROL HEARINGS BOARD


10

11


W. A. GISSBERG, Chairman

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DAVE MOONEY, Member

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CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER